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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/616,460  
Filing Date: July 08, 2003  
Appellant(s): ABEL, JEFF

**MAILED**

**AUG 20 2007**

**GROUP 3600**

Mr. David McKinney  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 3-27-07 appealing from the Office action mailed 6-22-06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

FR 2582190	Chat	11-1986
5,501,026	Bryant et al.	3-1996

Caddis Manufacturing, Inc. online catalog page 1 [online], 2000 [retrieved 2002-10-09].

Retrieved from the internet: [URL:http://www.caddis.com/Sorts/u-shaped.htm](http://www.caddis.com/Sorts/u-shaped.htm)

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, 11, 18 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by FR Patent No. 2582190.

Referring to claims 1 and 18, the French patent discloses a fish net and method comprising, a frame (not shown), a net – at G, of a flexible material attached to the frame, the frame holding the net in a position to land a fish – see the drawing figure, and a flexible length measuring scale – at A-D,H, permanently disposed generally linearly on a surface of the net – see the drawing figure, such that a user may determine a size of a fish held in the net by visually comparing the fish with the length measuring scale – see the drawing figure.

Referring to claim 2, the French patent discloses the length measuring scale further includes length markings – at C-D, representing standard units of length, and numeral designations associated with the length markings – see for example the drawing figure.

Referring to claim 4, the French patent discloses the length measuring scale includes length markings representing modified units of length to compensate for curvature of the fish and the length measuring scale – see for example at C and D in the drawing figure.

Referring to claim 11, the French patent discloses the net material is a mesh and net material – see for example the drawing figure.

Referring to claim 22, the French patent discloses the length measuring scale is visible on opposing sides of the net – see the drawing figure where the length measuring scale – at- A-J, extends from one side to an opposing side of the net – at G, such that the net may be used in an inverted configuration with respect to the frame – see for example the drawing figure where the net – at G is in a vertical orientation and therefore must be attached to an object/frame for support.

Referring to claim 23, the French patent discloses the length measuring scale and the numeral designations are visible on opposing sides of the net – see for example the drawing figure where the length measuring scale – at- A-J, extends from one side to an opposing side of the net – at G, and are properly readable when the net is used in an inverted configuration with respect to the frame – see for example the drawing figure where the net – at G is in a vertical orientation and therefore must be attached to an object/frame for support.

Referring to claim 24, the French patent discloses the standard units of length are selected from the group consisting of English units and metric units – see for example the drawing figure and the English abstract.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent as applied to claim 1 above, and further in view of U.S. Patent No. 5,501,026 to Bryant et al.

Referring to claim 5, the French patent does not disclose the net forms a pocket in which the fish naturally tends to rest in substantial linear alignment with the length measuring scale. Bryant et al. does disclose the net forms a pocket – at 28-30, in which the fish naturally tends to rest in substantial linear alignment with the length measuring scale – at 22 – see figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the length measuring scale of Bryant et al., so as to allow for the animal to be quickly and accurately measured while in the net.

Referring to claim 6, The French patent further discloses the length measuring scale extends from one side of the net to the other – see the drawing figure. The French patent does not disclose the frame is a substantially closed loop portion having opposing sides. Bryant et al. does disclose the frame further comprises a substantially closed loop portion – at 24, having opposing sides – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the frame being a closed loop of Bryant et al., so as to allow for the net to totally enclose any objects located inside.

Referring to claim 7, the French patent as modified by Bryant et al. further discloses the net further comprising, first and second side pieces with curved edges – see at the sides of item 24 in figure 1 of Bryant et al., a substantially linear center piece – at the upper portions of the net

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and the net portion – proximate 34 in figure 2 of Bryant et al., having side edges – see figure 1, the length measuring scale – at 100, being disposed on the center piece – see figures 1-3, and the side edges of the center piece being connected to the curved edges of the first and second side pieces, forming a pocket in which the animal naturally tends to rest in substantial linear alignment with the length measuring scale – see for example figures 1-3 of Bryant et al.

Referring to claim 8, the French patent as modified by Bryant et al. further discloses the first and second side pieces and the center piece are made of the same materials – see figures 1-3 of Bryant et al.

Referring to claim 9, the French patent as modified by Bryant et al. further discloses the first and second side pieces and the center piece are made of different materials – see the different materials of the net – at 28 and 40 in figures 1-3 of Bryant et al.

Referring to claim 10, the French patent as modified by Bryant et al. further disclose the center piece is of a material selected from the group consisting of mesh and net materials – see for example proximate 34 in figure 2 of Bryant et al.

Referring to claim 13, the French patent does not disclose a handle and a substantially closed loop portion attached to the handle, the net being attached to the loop portion. Bryant et al. does disclose a handle – at 22, and a substantially closed loop portion – at 24, attached to the handle – see for example figures 1-3, the net – at 28, being attached to the loop portion – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the handle and loop portion of Bryant et al., so as to allow for the net to be easily handled by the user.

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Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent as applied to claim 1 above, and further in view of Caddis Manufacturing, Inc. online catalog (from now on referred to as Caddis). The French patent does not disclose the length measuring scale is disposed directly on the net by a process selected from the group consisting of weaving into the material of the net, embroidering onto the material of the net, printing on the material of the net, and silk screening onto the material of the net. Caddis does disclose the length measuring scale is disposed directly on the net by a process selected from the group consisting of weaving into the material of the net, embroidering onto the material of the net, printing on the material of the net, and silk-screening on the material of the net – see for example the pictures of Caddis. Therefore it would have been obvious to one of ordinary skill in the art to take the fish net of the French patent and add the measuring scale disposed on the net from one of the methods described above of Caddis, so as to make the device more durable in that the length scale is permanently attached to the net.

Claims 14, 16-17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent in view of Bryant et al.

Referring to claims 14 and 16, the French patent discloses a fish net comprising, a frame (not shown), a net of flexible material – at G, attached to the frame, the frame holding the net in a position to land a fish – see for example the drawing figure, and a flexible length measuring scale – at A-D,H, permanently disposed generally linearly on a surface of the net – see the drawing figure, such that a user may determine a size of a fish held in the net by visually comparing the fish with the length measuring scale – see the drawing figure. The French patent discloses the length measuring scale further includes length markings – at C-D, representing

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standard units of length, and numeral designations associated with the length markings – see for example the drawing figure. The French patent further discloses the net includes a bottom and the length markings include a zero point – see between items C and D in the drawing figure, near the bottom, with two coordinated scales sharing the zero point – see the drawing figure, and extending in opposing directions therefrom – see for example the drawing figure, whereby a user may visually determine the length of the fish by substantially aligning the fish with the length scale – see for example the drawing figure, and adding the numeral designations which are approximately aligned with opposing ends of the fish – see for example the drawing figure. The French patent further discloses the length measuring scale includes length markings representing modified units of length to compensate for curvature of the fish and the length measuring scale – see for example at C and D in the drawing figure. The French patent further discloses the net forms a pocket in which the fish naturally tends to rest in substantial linear alignment with the length measuring scale – see for example – at G in the drawing figure. The French patent does not disclose a handle and a substantially closed loop portion attached to the handle, the net being attached to the loop portion. Bryant et al. does disclose a handle – at 22, and a substantially closed loop portion – at 24, attached to the handle – see for example figures 1-3, the net – at 28, being attached to the loop portion – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the handle and loop portion of Bryant et al., so as to allow for the net to be easily handled by the user.

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Referring to claim 17, the French patent as modified by Bryant et al. discloses the net material is a mesh and net material – see for example the drawing figure of the French patent and figure 1 of Bryant et al.

Referring to claim 21, the French patent as modified by Bryant et al. further discloses the length markings represent standard units of length – see for example the drawing figure and the English abstract of the French patent and – at 100 in figure 1 of Bryant et al.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent as applied to claim 18 above, and further in view of Bryant et al. The French patent does not disclose the step of placing the fish within the fish net further comprises causing the fish to rest in a bottom of the net in substantial liner alignment with the length scale. Bryant et al. does disclose the step of placing the fish within the fish net further comprises causing the fish to rest in a bottom of the net in substantial liner alignment with the length scale – see figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the length measuring scale and net of Bryant et al., so as to allow for the animal to be quickly and accurately measured while in the net.

#### **(10) Response to Argument**

Regarding claims 1, 14 and 18, the Chat reference FR 2582190 discloses a flexible length measuring scale and use of such scale as seen at A-F,H in the drawing figure where the device is deemed flexible in that it contains flexible connection elements – at H being cords, straps or – at J being ring elements which allow for the measuring scale to be flexibly connected to the net. Further, appellant does not specifically state that the measuring scale is made of a flexible material. Further, the strings or cords – at H are part of the measuring scale in that as seen in the

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drawing figure of Chat the strings/cords – at H are directly attached to the measuring scale – at A and appellant does not disclose the measuring scale is a one-piece unit and therefore it is deemed that the device of Chat discloses the claimed invention. Further, appellant argues that the cords/straps – at H of Chat cannot perform the function of measuring and thus cannot be part of the measuring scale. However, as stated above the straps/cords – at H are part of the scale as seen in the drawing figure of Chat and further as seen in appellant's drawing figure 2, there are portions of the measuring scale being the pieces of material of the scale not having the markings of the measuring scale and therefore these portions of material not including the markings cannot perform the function of measuring but are part of appellant's measuring scale. Therefore this argument is not persuasive. Further, the length measuring scale – at A-F,H of Chat is disposed on the net as seen in the drawing figure of Chat which shows the length measuring scale – at A-F,H directly attached on the net – at G. Further, the Chat reference discloses a frame in that as seen in the English translation the net – at G is a landing net which is a term well known in the art of fishing devices to be a net attached to a frame having a handle to be manually used by a fisherman. An example of the frame and handle can be seen in U.S. Patent No. 5,501,026 to Bryant et al. which shows the frame and handle – at 22,24,26. Further, as seen in page 2 of the English translation of Chat, the fish located in the measuring scale – at A, after being caught by a fisherman can be unhooked by the fisherman when the fish is in the measuring scale. Therefore, a frame must be present in the device of Chat to support the weight of the fish in the measuring scale while the fisherman is unhooking the fish after it is caught.

Regarding claim 4, the device of Chat has length markings as seen in the drawing figure which are used to measure the fish and the curvature of the fish body and that of the measuring

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scale – at A are accounted for in the measuring of the fish in the device in that the fish is allowed to rest at the bottom of the scale – at A as seen in the drawing figure. Appellant argues that the scale of Chat does not extend along a curve. However, these limitations are not found in claim 4 and thus this argument is moot. Further, appellant states that the term “modified units of length” references only the spacing of the markings of the measuring scale but as seen in claim 4 there are no specific limitations to the spacing of the markings and thus this argument is moot.

Regarding claims 2 and 24, the device of Chat must use standard units of length because there are no other units of length other than the standard metric and English units. Therefore a unit of length must be either in metric or English units.

Regarding claims 22-23, the device of Chat discloses a length measuring scale – at A, visible on two sides of a net in that as seen in the drawing figure of Chat there are two separate rows of markings which are separated by a space and therefore the markings on one side of this space can be construed as being on one side of the net – at G and the markings on the other side of the space can be construed as being on another side of the net – at G. Therefore one side of the net is on one side of the spacing between the markings and the other side is on the other side of the spacing as seen in the drawing figure of Chat.

Further, appellant argues that the device of Chat appears to require the fisherman to touch the fish. However, appellant does not include any limitations of the fisherman not touching the fish in the claims and therefore this argument is moot.

Regarding claims 5-10, 13-14, 16-17 and 20-21, appellant discussed non-analogous art and it is deemed that the devices of Chat and Bryant US 5501026 are analogous in that they have

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similar structure being fishing nets with length measuring scales attached and have similar functions of measuring animals while they are located in the net. Further, appellant

Regarding claims 6 and 14, the measuring scale of Chat – at A extends from one side of the net to the other as seen in the response to the arguments with respect to claims 22-23 above. Appellant argues that the scale – at A of Chat does not extend to the ends of the net, but as seen in claims 6 and 14 appellant does not use the term “ends” but uses the term “sides” and it is deemed that the device – at A of Chat extends from one side of the net to the other as seen in the drawing figure. Further, the device of Bryant does disclose a length measuring scale – at 100, which extends from one end of the net to the other as seen in figure 3 which is attached directly on the net – at 28 as seen in figures 1-3. Appellant further reiterates the argument of no flexible measuring scale is disclosed. However, it is deemed that the device of Chat discloses a flexible measuring scale as seen in the response to the arguments with respect to claim 1 above.

Regarding claim 7, appellant reiterates the non-analogous arguments regarding the combination of the Chat and Bryant et al. references. See the response to these arguments above with respect to claims 5-10, 13-14, 16-17 and 20-21. Further, the Bryant et al. reference provides teachings of the claimed limitations as seen in the grounds of rejection section above in this office action.

Regarding claim 16, appellant relies upon the arguments with respect to claims 2,4 and 24 and therefore see the response to these arguments above.

Further, the motivations to combine the Chat and Bryant et al. references found above in the grounds of rejection section of this office action are deemed proper in that they are found in the general knowledge of one of ordinary skill in the art. Since the Chat and Bryant et al.

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references have similar structures and functions it is deemed that they are combinable given the motivations to combine set forth above in the Grounds of Rejection section of this office action.

Regarding claim 12, the Caddis Manufacturing online catalog discloses a net portion with length measuring scale directly on the net as seen in the figure on page 1. The Caddis reference is not used to disclose the frame and flexible measuring scale even though the net material having the measuring scale is deemed to be flexible and thus these arguments are moot. Further, the markings of the Caddis reference are at least printed on as seen in the figure on page 1 of Caddis. Further, the combination of the Caddis and Chat references is deemed proper in that each of these references has similar structure being a net material having a length measuring scale attached and have the same function of assisting fisherman in measuring fish.

Further, appellant's affidavit under 37 CFR 1.132 filed on 4-18-06 is not deemed to be effective in that it gives sales figures for appellant's invention but does not disclose how appellant's fishing net compares to other fishing nets on the market and thus the numbers do not indicate that appellant's volume of sales is significant over other fishing nets in the market.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees:

Kurt Rowan

Meredith Petravick

  
DAVID PARSLEY  
PRIMARY EXAMINER



